Circuit Court for Baltimore City
Case No. 120181009

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1359

September Term, 2022

DAMIEN MICKENS

v.

STATE OF MARYLAND

Nazarian,
Zic,
Harrell, Glenn T.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: March 25, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Damien Mickens is one of four co-defendants charged in connection with a bus stop shooting that resulted in the death of two men and injuries to a third. After a joint trial in the Circuit Court for Baltimore City, a jury convicted Mr. Mickens of second-degree murder, conspiracy to commit first-degree murder, and related handgun offenses. Mr. Mickens appeals,[1] asserting that the trial court erred in two ways: *first*, by admitting his confession that, he says, violated his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), and Maryland common law, and *second*, by admitting an expert ballistics opinion that, based on the post-trial decision of our Supreme Court in *Abruquah v. State*, 483 Md. 637 (2023), was unreliable and should not have been admitted. We affirm the trial court's ruling that Mr. Mickens's confession was admissible but reverse his convictions and remand for further proceedings because the ballistics evidence was admitted improperly and the error wasn't harmless beyond a reasonable doubt.

I. BACKGROUND

A. The Shooting.

On the afternoon of April 10, 2020, a shooting near a Baltimore bus stop caused the deaths of Kendrick Brown and William Barrett and the seemingly unintended assault of Thanh Nguyen Ha, a passerby whose arm was grazed by a stray bullet. The event, which took place in broad daylight, was captured on surveillance video cameras mounted at

[1] Mr. Mickens's appeal was consolidated for consideration before the same panel with the appeals of his co-defendants. Because the evidence against him is different from those of his co-defendants and he raises discrete contentions, we address his appeal separately.

several nearby businesses. The silent videos show four males, with faces covered, approaching the street corner of Patapsco Avenue and Hanover Street on foot, then interacting with Messrs. Brown and Barrett. After what appears to be a drug transaction, one of the masked suspects (alleged to be co-defendant Antoine Trent) drew a pistol and shot Mr. Brown (who was standing in front of the bus stop), which prompted the masked suspects and Mr. Barrett to run away. Another masked male (alleged to be Mr. Mickens), chased Mr. Barrett down and across the street, around cars, while shooting at him from behind. Mr. Barrett fell to the ground directly across the street from Mr. Brown. Mr. Barrett's shooter's left pinky finger was bandaged visibly (as was Mr. Mickens's left pinky when he was interrogated by detectives later).

The videos showed a male greeting and speaking with several of the co-defendants. The investigation led police to question the individual, who was identified as eyewitness Sean Clark. Mr. Clark was questioned by police on April 22, 2020, and identified Mr. Mickens's co-defendants as Kevin Cleveland, Mr. Trent, and Jabez Johnson, whom he knew from the neighborhood, from still images taken from the videos. Mr. Clark was unfamiliar with the gunman with the bandaged pinky, though, and did not identify Mr. Mickens.[2]

[2] At trial, Mr. Clark testified that he didn't recognize any of the four co-defendants in court, and he only identified the co-defendants during his prior interview to get away from police, police told him what to say, and that he "went along with their charade." The video recording of his April 22 interview was admitted as a prior inconsistent statement.

The video and corresponding still images led police eventually to search Mr. Mickens's residence. On the morning of April 25, 2020, police executed a search warrant and seized clothing similar to that worn in the video by Mr. Barrett's shooter, along with ammunition and a loaded .40 caliber handgun. Mr. Mickens—seventeen years old at the time—then was arrested at his home, *Mirandized*, and taken to the police station. During the interrogation that followed, which we recount in detail below, Mr. Mickens confessed to his involvement in the shooting.

Mr. Mickens was charged with two counts each of first-degree murder, conspiracy to commit first-degree murder, and use of a firearm during the commission of a crime of violence (counts 1–3 related to the death of Mr. Brown and counts 4–6 to the death of Mr. Barrett). Mr. Mickens also was charged with first- and second-degree assault and use of a firearm during the commission of a crime of violence (counts 7–9, which related to the injuries to Mr. Ha), and possession of a firearm by a person under twenty-one (count 10).

B. The Suppression Hearing.

Mr. Mickens moved to suppress the statement that he made while in custody on the grounds that his *Miranda* waiver was invalid and that his statements were involuntary under federal and state constitutional law and Maryland common law. The court held a hearing on June 2, 2022, after trial had begun. At the hearing, the court admitted a video recording of Mr. Mickens's interview with police, a transcript of the interview, Mr. Mickens's signed *Miranda* waiver, and "the suspect/witness activity sheet," which included "information about how Mr. Mickens arrived at Homicide, what time he arrived

at Homicide, when he was given bathroom breaks," and the like. Neither detective who interviewed Mr. Mickens testified, nor did Mr. Mickens himself. Mr. Mickens also offered the expert testimony and written report of Dr. Michael O'Connell, a forensic psychologist who evaluated him.

1. The recording and transcript of the interview.

The interview took place on April 25, 2020, at 9:20 a.m., was conducted by Detectives Eric Ragland and Eric Perez, and lasted about three hours and forty minutes. Mr. Mickens was seventeen years old at the time and had never been arrested before. At the outset, Detective Ragland stated that he had already read Mr. Mickens his *Miranda* rights at his arrest and would do so again. Before reviewing the *Miranda* form, Detective Ragland inquired whether Mr. Mickens had "any problems with writing or reading":

> DETECTIVE RAGLAND: . . . Do you have any problems with writing or reading?
>
> MR. MICKENS: I can't spell a lot.
>
> DETECTIVE RAGLAND: Okay.
>
> MR. MICKENS: I could spell. I can read, but I can't—
>
> DETECTIVE RAGLAND: Yeah, spelling doesn't count.
>
> MR. MICKENS: Okay.
>
> DETECTIVE RAGLAND: Spelling doesn't count. I'm going to read some stuff here that I read to you before in the house and these are Miranda rights.
>
> MR. MICKENS: Uh-huh.

Detective Ragland then had Mr. Mickens read each right out loud one-by-one:

> DETECTIVE RAGLAND: . . . Remember I explained to you that every citizen of the United States, you have certain rights—

MR. MICKENS: Uh-huh.

DETECTIVE RAGLAND:—and we're here to protect those rights and advise you of those rights so that they're not violated. Okay?

MR. MICKENS: Okay.

* * *

DETECTIVE RAGLAND: So since you don't have a problem with reading, I'm going to all[ow] you to read these out loud to me.

MR. MICKENS: Uh-huh.

DETECTIVE RAGLAND: Okay? After you read each one, I'm going to ask you do you have any questions like I did before.

MR. MICKENS: Uh-huh.

DETECTIVE RAGLAND: All right? And then you're going to place your initials in that red ink right here in that place and then when we finish that, then we'll get down to this section. All right? . . .

* * *

MR. MICKENS: You have a right to remain silent.

DETECTIVE RAGLAND: You understand that?

MR. MICKENS: Yes, sir.

DETECTIVE RAGLAND: Place your initials.

MR. MICKENS: I do. Anything you say or do will be held against you in a court of law.

DETECTIVE RAGLAND: Understand?

MR. MICKENS: Yes, sir. You have the right to talk to an attorney before any questions or during any questioning.

DETECTIVE RAGLAND: You understand?

MR. MICKENS: No, I don't understand that.

DETECTIVE RAGLAND: All right. You have the right to talk with an attorney. That is you could talk to a lawyer, okay.

MR. MICKENS: Uh-huh.

DETECTIVE RAGLAND: Before I ask you any questions or

while I'm asking you questions, you can say, "I want to talk to a lawyer." Okay?

MR. MICKENS: So I could wait?

DETECTIVE RAGLAND: You always can wait. You have the right to say, "I want to talk to an attorney"—

MR. MICKENS: Okay.

DETECTIVE RAGLAND:—before I ask you any questions today—

MR. MICKENS: Uh-huh.

DETECTIVE RAGLAND:—or we get to the point where you say we're going to talk and while you're talking if you decide that you want to say, "I want a lawyer," you can say you want a lawyer, but—

MR. MICKENS: Okay.

DETECTIVE RAGLAND:—signing this just says that you understand it.

MR. MICKENS: Yeah.

DETECTIVE RAGLAND: You're not asking for it, but it just says you understand it. If you understand—

MR. MICKENS: I mean, I'm cooperating, but—

DETECTIVE RAGLAND: Okay.

MR. MICKENS:—I still get a lawyer?

DETECTIVE RAGLAND: You will. We'll get a little further and explain that some more.

MR. MICKENS: If you agree to answer questions, you may stop at any time and request an attorney and no further questions will be asked of you.

DETECTIVE RAGLAND: Self-explanatory?

MR. MICKENS: Yes.

DETECTIVE PEREZ: It's kind of like what you said just now, but.

DETECTIVE RAGLAND: Kind of what you asked. It answered your question?

MR. MICKENS: Uh-huh.

DETECTIVE RAGLAND: All right. Go ahead and read the last one.

MR. MICKENS: If you want an attorney and cannot to [sic] hire one, an attorney will be appointed to you—appointed to your [sic] represent to [sic] you.

DETECTIVE RAGLAND: You understand that? How about I read that one? If—

MR. MICKENS: They—if I can't afford it, ya'll going to give me one.

DETECTIVE RAGLAND: Right. A public defender.

MR. MICKENS: Uh-huh.

DETECTIVE RAGLAND: Okay. All right. And now that you say that you understand all five of these rights, I just need you to read the bold print there and then sign.

MR. MICKENS: Write I—

DETECTIVE RAGLAND: Read it out loud first.

MR. MICKENS: I have been advised of and understand my rights. I freely and voluntarily waive my right and agree to talk with the police without having an attorney present. So I gotta sign that?

DETECTIVE RAGLAND: You don't have to sign it. Do you understand what it's saying?

MR. MICKENS: Yeah.

DETECTIVE PEREZ: Yeah.

DETECTIVE RAGLAND: Can you explain to me what it's saying since you—

MR. MICKENS: It's saying I feel—I feel—what's it called, comfortable talking to y'all.

DETECTIVE RAGLAND: Correct.

DETECTIVE PEREZ: Basically, you know what's going on.

DETECTIVE RAGLAND: And then at any time you decide that you don't want to talk anymore, you always can refer back to No. 4 and say, "I want a lawyer." Okay? So if you sign that, we can start having a conversation and then if you don't like any of it, you can stop at any time.

MR. MICKENS: Do I have to write it in cursive?

DETECTIVE PEREZ: However you want to write it, man.

Mr. Mickens signed the waiver and began answering the detectives' questions. During the preliminary discussion that followed, Mr. Mickens mentioned that he's "supposed to be in 11th" grade but was only in ninth grade, and couldn't remember the last time he'd been to school, explaining he "just didn't want to go."

When detectives began asking Mr. Mickens about the shooting, they informed him that they were investigating a shooting that occurred on April 10, 2020 at the corner of East Patapsco and South Hanover at which "three people were shot." After Mr. Mickens refused to tell detectives the last time he'd been in that area, detectives urged Mr. Mickens to "do the right thing":

> This is your chance to get your shit right and your side of the story right for yourself . . . and for your family, and that nice young lady who we met this morning who is heartbroken right now. Okay? Your mother.
>
> * * *
>
> She's devastated and deflated right now. . . . You just crushed her world today.
>
> * * *
>
> Hardworking single parent like her, it's up to you to do the right thing and make this right the best way possible you can today because guess what, if you don't jump on the train now, your other boys are going to be on the express train and you're going to be left dolo [sic].

Mr. Mickens agreed to talk to detectives about his involvement in the shooting but insisted that he wouldn't give any names of co-defendants.

Detectives showed Mr. Mickens photographs of the two deceased victims and asked if he knew them. He responded, "I usually buy weed" from "the bigger gentleman," *i.e.*, Mr. Brown, but told detectives he didn't know the other victim. Mr. Mickens then identified himself in a photograph from the shooting and identified Mr. Brown as "the guy that [he] normally buy[s] weed from," but refused to identify anyone else in the photo.

After Mr. Mickens had identified himself in the still photos from the video of the shooting (which show him shooting a gun at Mr. Barrett), detectives asked him "[w]hat was going on that day? Tell me a story." They pressed Mr. Mickens for an answer:

> DETECTIVE RAGLAND: [Y]ou're the only one in here, right? . . . You're the only one right now in this room that gets an opportunity, like he said, to make it good.
>
> MR. MICKENS: What is it going to do, make good for me?
>
> * * *
>
> DETECTIVE RAGLAND: If you leave it up to me to write the story based on anything that I have in my investigation—
>
> MR. MICKENS: Uh-huh. It could be worse.
>
> DETECTIVE RAGLAND:—it's going to look—it's probably going to look worse and I have—and you don't want—listen, you said you're a decent guy, right?
>
> MR. MICKENS: Yeah.
>
> DETECTIVE RAGLAND: What's your arrest record look like?
>
> MR. MICKENS: You tell me.
>
> * * *
>
> DETECTIVE RAGLAND: That's exactly my point.
>
> MR. MICKENS: Thank you.
>
> DETECTIVE RAGLAND: So do you want to sit here—
>
> MR. MICKENS: All over some fucking weed.
>
> DETECTIVE RAGLAND: Okay.

> MR. MICKENS: It was over an argument.
>
> * * *
>
> MR. MICKENS: Tried to buy some weed, somebody got smart. One person got angry. N[****]s got angry, you feel me. It was all emotions.
>
> * * *
>
> DETECTIVE RAGLAND: [W]hat was the specific argument over the weed? What was wrong? Was something wrong with the weed? Was something wrong with the money? Something—
>
> MR. MICKENS: Somebody felt like they wasn't getting what they deserved.

Throughout the questioning, Mr. Mickens identified co-defendants generically as "with" his group buying weed, but repeatedly refused to give detectives their names.

At one point, detectives asked Mr. Mickens where he got the gun they discovered in his home, prompting Mr. Mickens to ask, "I gotta tell you the place?" Detective Perez responded, "You can tell me whatever you want." Mr. Mickens told them he got the gun in Charles County but, again, refused to give any names or further details.

At that point, detectives asked Mr. Mickens whether he fired the gun when the two victims were shot and killed, imploring him to "make sure [he] do[es]n't look like a monster" and insisting that confessing "might mend some of [his] mother's heart":

> DETECTIVE RAGLAND: . . . Did you ever fire that gun that we found when these two guys got shot and killed? . . . This is the moment of truth part.
>
> MR. MICKENS: Uh-huh. Yeah, I know.
>
> DETECTIVE RAGLAND: Okay. This is where you make sure that you don't look like a monster and it's just something that, you know, happened that you regret.
>
> MR. MICKENS: Yeah, I regret it.

> DETECTIVE RAGLAND: Okay. What do you regret?
>
> MR. MICKENS: I know y'all want me to say it. I know. I know.
>
> DETECTIVE RAGLAND: Because I need you to say it because if you don't, then I have to paint the story and I don't want to do that.
>
> DETECTIVE PEREZ: This might mend some of your mother's heart, at least the beginning stages because you're still a young man. You ain't even 18 yet, man, so you got plenty of time to make this shit right starting now.
>
> DETECTIVE RAGLAND: And the one thing she's going to want you to do is at least be honest to help yourself because there's always light at the end of the tunnel.

Mr. Mickens confirmed that he shot one of the victims. He also confirmed that the gun found in the search was the gun used on the day of the shooting. For the remainder of the interview, detectives continued to request names and information about co-defendants and Mr. Mickens refused to answer those questions.

2. Dr. O'Connell's opinion testimony.

Mr. Mickens also offered the testimony of Dr. O'Connell as an expert in the field of forensic psychology. Dr. O'Connell had evaluated Mr. Mickens for the purpose of determining whether his confession was voluntary. Dr. O'Connell opined that "due to [Mr. Mickens's] vulnerabilities and features of the interrogation, [Dr. O'Connell] thought his presentation was consistent with someone who didn't have a meaningful understanding of his Miranda rights."

Dr. O'Connell testified that the *Miranda* form officers used for Mr. Mickens was at a 7.9-grade reading level, and that Mr. Mickens read at a first- or second-grade level. Dr. O'Connell also believed Mr. Mickens was experiencing drug withdrawal during the

interrogation, which would have made him uncomfortable and subject to "increase[d] suggestibility." Dr. O'Connell considered Mr. Mickens's diagnoses—including persistent depressive disorder, post-traumatic stress disorder, and substance abuse, among others—in assessing his ability to understand his *Miranda* rights. Dr. O'Connell's report, which was admitted into evidence, concluded that Mr. Mickens lacked a meaningful understanding of his *Miranda* rights and that he had significant concerns about whether Mr. Mickens's statement was uncoerced:

> From a psychological perspective, the important factors to consider would include underlying difficulties with reading, attention, impulse control, immaturity and suggestibility as well as the coercive interrogative techniques that were utilized. In my opinion, to a reasonable degree of psychological certainty, due to the interplay between vulnerabilities of Mr. Mickens and features of the interrogation, I believe that Mr. Mickens' presentation on 4/25/20 is consistent with someone who would not have had a meaningful understanding of the Miranda rights. It is also my opinion, to a reasonable degree of certainty that due to the interplay between features of the interrogation and vulnerabilities of Mr. Mickens, there are significant concerns as to the extent to which Mr. Mickens made an uncoerced statement.

3. Arguments.

With respect to *Miranda*, the State argued that although it was "perfectly acceptable for an officer to read every single Miranda right as one paragraph," the officers here "went through every right with Mr. Mickens individually and handed him the piece of paper" and had him initial each right individually. They let him ask questions and "made sure before moving onto the next right that they went over with him to his level of satisfaction." The State argued that Mr. Mickens had demonstrated that he understood his rights by refusing

to identify the other suspects in the case. And as to voluntariness, the State argued that Mr. Mickens was just "nine months shy" of his 18th birthday, did not acquiesce when the police got details wrong, and withheld information. The State noted as well that Mr. Mickens had expressed remorse for what he did and "he wasn't confessing for any reason other than he had been waiting for the police to come to him, he knew what he did was wrong . . . ."

Mr. Mickens responded that he didn't make the waiver "with a full awareness, both of the nature of the right being abandoned and the consequences of the decision to abandon it." Defense counsel described Mr. Mickens as "a young man with borderline intellectual functioning, with this array of mental health disorders including ADHD, who had an IEP in school, who had only gone up through the ninth grade although those grade levels cease to really matter when you're talking about a kid with special[] education [accommodations] . . . who [wa]s reading at a second grade level" and "was withdrawing from drugs at the time of th[e] interview."

4. The court's ruling.

The court found summarily that the statement wasn't "compelled or obtained as a result of any force, promise, threat or inducement." With respect to his *Miranda* waiver, the court stated it was "a close call" because it "f[ou]nd [Dr.] O'Connell's testimony to be persuasive." But after re-watching the interrogation video, the court found that Mr. Mickens had given his statement voluntarily:

> Mr. Mickens was Mirandized, he did ask questions, the police responded appropriately, they did offer some explanations, though some might have bee[n] cursory but . . . Miranda was complied with. The reason that I came to the conclusion that it

> was a voluntary statement is because there were times when Mr. Mickens did not want to provide certain information and he did not. Given—that is what put me over the edge of being—deciding that it was in fact a voluntary statement. He did show the ability to not completely cooperate at some points.

The court then found the State had met its burden to establish the confession's admissibility.

C. Pre-Trial Motion To Exclude Ballistics Testimony.

Before trial, the State served notice to Mr. Mickens's trial counsel that Jessica Kennedy, the State's ballistics expert, would opine that eleven of eighteen .40 caliber semiautomatic casings came from the gun seized from Mr. Mickens's home. Mr. Mickens filed a motion *in limine* to exclude Ms. Kennedy's testimony under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and *Rochkind v. Stevenson*, 471 Md. 1 (2020). At the pre-trial hearing on Mr. Mickens's motion, Ms. Kennedy testified that she examined thirty spent cartridge casings and eighteen bullet fragments recovered by police officers after the shooting. She testified that she used the Association of Firearm and Toolmark Examiners ("AFTE") theory of identification to determine whether a casing was fired from a particular gun. All parties, including the trial court, were aware that *Abruquah v. State* was pending in the Maryland Supreme Court, but the court ruled that the science supported Ms. Kennedy's proffered testimony and denied Mr. Mickens's motion to exclude it.

D. The Jury Trial.

The State's evidence against Mr. Mickens at trial consisted of the surveillance video evidence, his confession video (which showed Mr. Mickens with a bandaged pinky that matched the shooter's), the gun and a blue jacket matching the shooter's that police recovered from the search of Mr. Mickens's home, and Ms. Kennedy's expert ballistics testimony, during which she testified that cartridge casings collected at the crime scene were fired by the gun found in Mr. Mickens's home.

The voluntariness of Mr. Mickens's confession was left as a contested issue for the jury. The jury viewed portions of Mr. Mickens's statement, including Mr. Mickens's *Miranda* advisement, his self-identification in the police photograph, his explanation for why the shooting occurred, and his confession that he fired the gun found in his house the day of the shooting. Detective Ragland was cross-examined at length about the interrogation techniques used on Mr. Mickens. Mr. Mickens again offered the testimony of Dr. O'Connell, who opined that "due to [Mr. Mickens's] vulnerabilities and being exposed to . . . coercive interrogation techniques, . . . there [are] major concerns about the extent to which his statement was uncoerced." In Dr. O'Connell's trial opinion, Mr. Mickens "presented during the interrogation as someone that didn't have a meaningful understanding of his Miranda rights."

The jury was instructed to disregard Mr. Mickens's confession "unless the State has proven beyond a reasonable doubt that the force, threat, promise or inducement or offer of reward did not in any way cause the defendant to make the statement." And the jury was

instructed otherwise to "decide[] whether it was voluntary under all the circumstances" and that if it found "beyond a reasonable doubt that the statement was voluntary" they were to "give it such weight as [they] believe it deserves."

In closing, the State relied primarily on the videos of the shooting and Mr. Mickens's confession, but also highlighted the ballistics evidence. After describing the video evidence, the State argued that the jury should "remember the firearms examiner testified that she was able to match shell casings to three different weapons. . . . And she said that these shell casings came back to the firearm recovered from Damien Mickens' house." And after arguing that Mr. Mickens's identity in the video was established by his confession and clothing, the State concluded by stating that "[b]ut, more importantly, he has this murder weapon still at his house. You heard from the firearms examiner, the gun found at Damien Mickens' house is the gun that was used to leave all of these yellow shell casings that were at the scene."

Mr. Mickens's closing argument highlighted the ability of the eyewitness, Mr. Clark, to identify him and sought to discredit the ballistics evidence on the theory that Ms. Kennedy testified that 11 of the 30 casings at the scene belonged to Mr. Mickens's gun, but his gun only held ten rounds, he didn't reload on the video, and there was no extended magazine.

Primarily, though, Mr. Mickens questioned the voluntariness of the confession and urged the jury to disregard it. The defense argued first that Mr. Mickens didn't understand his rights. Defense counsel argued as well that the police had failed to test the veracity of

Mr. Mickens's statement and that Mr. Mickens might have taken the blame for the murder to "cover for others," believing that because he was a juvenile, he wouldn't be sent to adult prison.

The jury found Mr. Mickens guilty of conspiracy to murder Mr. Brown (count 2), second-degree murder of Mr. Barrett (count 4), conspiracy to murder Mr. Barrett (count 5), use of a firearm during the commission of a crime of violence against Mr. Barrett (count 6), and possession of a firearm while under the age of twenty-one (count 10). He was sentenced to life imprisonment, all but sixty years suspended, for the conspiracy to murder Mr. Barrett (count 5), and forty years for Mr. Barrett's murder (count 4), running consecutively to count 5, for a total sentence of one hundred years. He received concurrent sentences of twenty years for the use of a firearm (count 6), and three years for underage possession of a firearm (count 10).

Mr. Mickens timely appealed. We supply additional facts as necessary below.

II. DISCUSSION

The State concedes that the ballistics opinion testimony admitted at trial was prohibited under the rule announced later in *Abruquah*, so this appeal presents two issues:[3]

[3] Mr. Mickens phrased his Questions Presented as follows:

> 1. Whether the circuit court erred in finding knowing, intelligent, and voluntary the statement of Appellant, a seventeen-year-old ninth grader with a 76 IQ, when detectives told him confessing would "make it good," avoid him looking "like a monster," and "mend some of [his]

Continued . . .

first, whether the trial court found properly that Mr. Mickens's statement to police was knowing, intelligent, and voluntary; and *second*, whether the circuit court's error in permitting a firearm expert's opinion testimony that casings found at the scene were fired from a specific firearm was harmless beyond a reasonable doubt. We affirm the trial court's ruling that Mr. Mickens's confession was admissible but reverse his convictions because the decision to admit the ballistics evidence wasn't harmless beyond a reasonable doubt.

In this case, the State's burden with respect to each issue is decisive. For the confession to be admissible, the State needed to prove that it was more likely than not that Mr. Mickens waived his *Miranda* rights knowingly, intelligently, and voluntarily and that his statement was not coerced. However, to show that the improper ballistics testimony was harmless, the State needed to prove beyond a reasonable doubt that the testimony in no way influenced the verdict. And given the totality of the evidence and the fact that these issues were considered together, we cannot say with the requisite certainty that the

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mother's heart," whereas not confessing would "look worse."

2. Whether the circuit court erred under *Abruquah* in permitting a firearm expert's testimony that cartridge casings collected at the crime scene were fired by a specific gun.

The State phrased its Questions Presented as follows:

1. Did the trial court properly conclude that Mickens's statement to the police was admissible?
2. Was any error concerning the firearm examiner's unqualified opinion that 11 of the cartridge casings found at the scene were fired from the firearm discovered in Mickens's home harmless?

inadmissible ballistics evidence didn't influence the jury's decisions.

A. Mr. Mickens's Statement Was Admitted Properly.

Although the *Abruquah* issue warrants reversal, we must consider *first* whether Mr. Mickens's confession was obtained in compliance with *Miranda v. Arizona*, 384 U.S. 436 (1966), and was voluntary under Maryland common law. Mr. Mickens received *Miranda* warnings when he was entitled to them, but he argues his confession should have been excluded for three reasons: (1) he didn't understand the *Miranda* warnings sufficiently and thus didn't waive his rights knowingly and intelligently, (2) the detectives' "coercive tactic[s] r[an] afoul of the protections the Fifth Amendment affords" rendering them constitutionally involuntary, and (3) the confession was involuntary under Maryland common law because it was the product of an improper threat, promise, or inducement by the police.

The State responds that it met its burden of proving that Mr. Mickens waived his *Miranda* rights knowingly, intelligently, and voluntarily and that the confession itself was voluntary. The State emphasizes the posture of the trial court's decision, that the State needed only to show that in the totality of the circumstances, "it was more likely than not that the waiver was valid." We agree with the State that, on this record and in this posture, the State met its burden.

The suppression hearing is the exclusive source of the record we consider on this issue. *State v. Johnson*, 458 Md. 519, 532 (2018). We review the underlying findings of fact for clear error, view them in the light most favorable to the State, and perform our own

independent constitutional appraisal of the record:

> Our review of a grant or denial of a motion to suppress is limited to the record of the suppression hearing. The first-level factual findings of the suppression court and the court's conclusions regarding the credibility of testimony must be accepted by this Court unless clearly erroneous. The evidence is to be viewed in the light most favorable to the prevailing party. We undertake our own independent constitutional appraisal of the record by reviewing the law and applying it to the facts of the present case.

Madrid v. State, 474 Md. 273, 309 (2021) (*quoting Thomas v. State*, 429 Md. 246, 259 (2012)). And as we already mentioned, the State had the burden in the circuit court to prove by a preponderance of the evidence that that there had been a valid *Miranda* waiver and that the confession was voluntary. *Id.* at 310, 317.

1. The State proved by a preponderance of the evidence that Mr. Mickens knowingly, intelligently, and voluntarily waived his Miranda *rights.*

Although Mr. Mickens indisputably received *Miranda* warnings, he argues that "he did not sufficiently understand them, and detectives used coercive tactics thereafter to elicit a confession." The U.S. Constitution provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend V. Under *Miranda*, a person may be subjected to custodial interrogation, but only after being informed of certain constitutional rights, including:

> [(1)] that he has the right to remain silent, [(2)] that anything he says can be used against him in a court of law, [(3)] that he has the right to the presence of an attorney, and [(4)] that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

384 U.S. at 479. A suspect can waive *Miranda* rights, but the State must prove by a

preponderance of the evidence that "the defendant knowingly, intelligently, and voluntarily waived those rights." *Madrid*, 474 Md. at 310. The inquiry consists of two parts:

> First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.

Id. (*quoting Gonzalez v. State*, 429 Md. 632, 652 (2012)).

A juvenile's confession must be evaluated with "great care . . . to assure that statements made to the police by juveniles are voluntary before being permitted in evidence." *Jones v. State*, 311 Md. 398, 407 (1988). "[T]he age of a juvenile, in itself, will not render a confession involuntary," but we look to the "totality of the circumstances . . . in determining the validity of a juvenile's waiver of constitutional rights and the traditional voluntariness of a juvenile's confession." *Id.* When evaluating a confession, "a court must consider the defendant's age, experience, education, background, intelligence, and conduct." *Madrid*, 474 Md. 310. "The absence of a parent or guardian at the juvenile's interrogation is an important factor in determining voluntariness, although the lack of access to parents prior to interrogation does not automatically make a juvenile's statement inadmissible." *Jones*, 311 Md. at 407–08.[4]

[4] Mr. Mickens points us to Maryland Code (1973, 2020 Repl. Vol., 2023 Supp.), § 3-8A-14.2(b) of the Courts and Judicial Proceedings Article ("CJ"), which went into effect two years after Mr. Mickens's interrogation, and argues the State's position vis-à-vis Mr. Mickens's confession "is at odds with new legislation enhancing juvenile

Continued . . .

a. An intelligent and knowing waiver.

A *Miranda* waiver is "knowing" and "intelligent" when it is made with full awareness both of the nature of the rights being abandoned and the consequences of abandoning them. *Gonzalez v. State*, 429 Md. 632, 652 (2012). Mr. Mickens argues the State failed to meet its burden because "[d]etectives knew [Mr. Mickens] was a seventeen-year-old ninth grader with limitations, and that moments earlier, the right to counsel had confused him."

At oral argument, both parties identified the closest case as *Madrid v. State*, 474 Md. at 273. In *Madrid*, the Supreme Court of Maryland considered the admissibility of a sixteen-year-old immigrant's confession against his age, education, language skills, and ability to comprehend what was happening:

> At the time of the interview, Madrid was sixteen years and approximately eight months old. Madrid had been in the United States for two years and had completed some high school in the United States, including classes in science, algebra, history, and English as a second language. Madrid worked, was paid $1,400 every other week, and gave half of his pay to his mother. Madrid is from Guatemala and his first language is Spanish, and Detective Cruz, whose first language is also Spanish, conducted the interview in Spanish. Specifically, Detective Cruz advised Madrid of his Miranda rights in Spanish by reading aloud verbatim from a card on which the Miranda rights were printed in Spanish. After the advisement, Madrid responded affirmatively to Detective Cruz's question concerning whether he understood his rights

protections during interrogations." The statute indeed strengthens protections for children undergoing custodial interrogations and—in cases of officers' willful noncompliance with the statute—heightens the State's burden to prove a statement's admissibility, *see* CJ § 3-8A-14.2(h), but it cannot affect our analysis in this case because it took effect too late to apply to Mr. Mickens's confession.

> and willingly responded to other questions before and after the advisement. Apart from Madrid's present argument that Detective Cruz did not comply with the requirements for the Miranda advisement of a juvenile because he (Detective Cruz) failed to ascertain how far Madrid went in school or to assess whether he was capable of understanding his rights, there is no indication that Madrid failed to understand his rights or the consequences of waiving them.
>
> According to Detective Cruz, Madrid did not appear to be under the influence of drugs or alcohol and "was awake[,] responsive[,]" "[a] bit apprehensive, but cooperative." For his part, at the suppression hearing, Madrid testified that he could not remember being given his *Miranda* rights, not that he was given his rights but was unable to comprehend them. In describing the circumstances of the *Miranda* advisement, the circuit court stated: "I thought Detective Cruz . . . was very calm and very methodical about how he went about asking the questions and what he did with [Madrid]." The interview began at 11:52 p.m. and Madrid confessed approximately twenty minutes later, at approximately 12:12 p.m. Between the start of the interview and when Madrid confessed, he and Detective Cruz were the only individuals present. During the advisement and interview, Detective Cruz was unarmed and in plainclothes. Although Detective Cruz told Madrid that he had spoken to Madrid's mother and stepfather, the transcript of the interview demonstrates that Madrid did not ask to speak with either of them or to have either of them present for the advisement or interview. In sum, Madrid was a sixteen year old whose first language is Spanish and who by his own account had worked and attended high school in this country and who was accurately advised of his *Miranda* rights verbally in Spanish by a single detective who grew up speaking Spanish, and, when asked, Madrid responded that he understood his rights.

Id. at 323–24. The Court found the advisement proper and that "under the totality of the circumstances, the State . . . prove[d] by a preponderance of the evidence that Madrid knowingly and voluntarily waived his *Miranda* rights." *Id.* at 322.

Mr. Mickens urges us to distinguish him from Mr. Madrid because Mr. Madrid "was not as vulnerable as [Mr. Mickens]" in light of Mr. Mickens's cognitive limitations and the fact that he had never been interviewed by police. He points primarily to the portion of the interrogation where he indicated to detectives that he didn't understand the right to counsel:

> MR. MICKENS: Yes, sir. You have the right to talk to an attorney before any questions or during any questioning.
>
> DETECTIVE RAGLAND: You understand?
>
> MR. MICKENS: No, I don't understand that.
>
> * * *
>
> DETECTIVE RAGLAND: Can you explain to me what it's saying since you—
>
> MR. MICKENS: It's saying I feel—I feel—what's it called, comfortable talking to y'all.
>
> DETECTIVE RAGLAND: Correct.
>
> DETECTIVE PEREZ: Basically, you know what's going on.

He argues that his cognitive limitations and shortcomings "were compounded by detectives misleading him" during this advisement, and that feeling "comfortable" with talking to police is "insufficient."

But viewing the interview in its totality and in the light most favorable to the State (as we must), we see no error in the circuit court's conclusion that Mr. Mickens understood his rights and the consequences of waiving them. During the conversation that followed Mr. Mickens's indication of confusion (dialogue not included in his brief), detectives told him that "[y]ou always can wait. You have the right to say, 'I want to talk to an attorney' . . . before I ask you any questions today[.]" The explanation seemed sufficient to Mr. Mickens and he replied, "Okay," "Uh-huh," and "Yeah." With regard to the *Miranda* form, the

detectives told him that "[y]ou don't have to sign it." Once the *Miranda* advisement was explained, like Mr. Madrid, Mr. Mickens "gave no indication that he was confused" or that he "did not understand anything [the detective] explained to him." *Id.* at 326 (cleaned up). In reviewing the video in this case and considering the manner in which Mr. Mickens was asked questions, the ways he responded, and his refusal to provide detectives with certain information, we agree with the trial court that the interrogation complied with *Miranda* and that Mr. Mickens understood his rights and the consequences of waiving them. Other similar cases, if not on all fours factually, support this assessment. *Compare Gonzalez*, 429 Md. at 648 (defendant who was "barely 18 years old, uneducated, and a recent immigrant to the United States with no prior contact with our criminal justice system" knowingly and intelligently waived *Miranda* rights given in a foreign language); *Fare v. Michael C.*, 442 U.S. 707, 725 (1979); *McIntyre v. State*, 309 Md. 607, 624–26 (1987) (State met burden of showing fifteen-year-old waived *Miranda* rights); *United States v. Male Juv. (95-CR-1074)*, 121 F.3d 34, 40 (2d Cir. 1997) (although evidence indicated "defendant has a host of attentional and learning disabilities, nothing in the testimony or psychological reports indicates that defendant could not comprehend the rights that were explained and read to him."); *Correll v. Thompson*, 63 F.3d 1279, 1288 (4th Cir. 1995) (*Miranda* waiver valid even though twenty-four-year-old defendant had IQ of 68).

Although the circuit court found Dr. O'Connell's testimony persuasive, the expert stopped short of testifying that Mr. Mickens did not understand his rights. And ultimately, as in *Madrid*, Mr. Mickens "did not testify at the suppression hearing that he did not

understand his rights." *Madrid*, 474 Md. at 326. The absence of such testimony permitted an inference that Mr. Mickens did understand his rights. *See id.* at 329 n.11; *see also Jones*, 311 Md. at 408 n.5 (defendant showed he "was able to fend for himself"). And as the trial court noted, "there were times when Mr. Mickens did not want to provide certain information and he did not" and "[h]e did show the ability to not completely cooperate at some points," which demonstrates he understood his right to remain silent.

The detectives reviewed the rights with Mr. Mickens thoroughly and answered his questions about his right to an attorney. Detective Ragland reviewed methodically each of the rights Mr. Mickens was agreeing to waive. After Mr. Mickens read each right aloud, he stated that he understood it and placed his initials next to each right listed on the waiver form. When Mr. Mickens said that he didn't understand, Detective Ragland clarified the waiver's meaning. At the conclusion, Mr. Mickens signed a statement indicating that he waived his rights. Whenever Mr. Mickens gave any indication that he was confused or he didn't understand his rights, officers told him that he didn't have to answer their questions. And on multiple occasions, he didn't: he withheld important information intentionally, information that he obviously believed would incriminate others. On this record, we agree with the State and circuit court that the State met its burden of proving that Mr. Mickens waived his *Miranda* rights knowingly and intelligently.

b. Constitutional voluntariness.

The *Miranda* waiver notwithstanding, Mr. Mickens's confession still had to be voluntary. Our Supreme Court "has established a test for voluntariness that prohibits

confessions that are the result of police conduct that overbears the will of the suspect and induces the suspect to confess." *Lee v. State*, 418 Md. 136, 159 (2011). Mr. Mickens argues his confession wasn't voluntary under federal constitutional law because detectives coerced the confession by telling him he could "make it good," and by not telling his side of the story it would "look worse." Mr. Mickens interprets the statements as saying to him that "if [Mr. Mickens] did not confess, he would be worse off with [Detective] Ragland's account." On this record, we disagree.

The context here is important, so we repeat the statements made that Mr. Mickens characterizes as a "veiled threat":

> DETECTIVE RAGLAND: . . . You're the only one right now in this room that gets an opportunity, like he said, to make it good.
>
> MR. MICKENS: What is it going to do, make good for me?
>
> * * *
>
> DETECTIVE RAGLAND: If you leave it up to me to write the story based on anything that I have in my investigation—
>
> MR. MICKENS: Uh-huh. It could be worse.
>
> DETECTIVE RAGLAND:—it's going to look—it's probably going to look worse and I have—and you don't want—listen, you said you're a decent guy, right?
>
> MR. MICKENS: Yeah.

At this point of the interview, Mr. Mickens already had identified himself in the video surveillance footage that showed him shooting a gun at and taking down Mr. Barrett. At that point in the interview, the issue was motive, not identification. So after being told "[i]f you leave it up to me to write the story . . . it's probably going to look worse," Mr. Mickens explained that the shooting was motivated by drug money and "[i]t was all emotions," and

he admitted that Mr. Brown's shooter was "with" him, while refusing to give his name.

Mr. Mickens then was confronted with the gun that was found in the search of his house:

> DETECTIVE PEREZ: You ever shoot at anybody though?
>
> MR. MICKENS: Mmm. Mmm.
>
> DETECTIVE RAGLAND: Mmm?
>
> DETECTIVE PEREZ: Is that a yeah?
>
> DETECTIVE RAGLAND: Is that your same yeah—
>
> DETECTIVE PEREZ: That's the same yeah from the photos?
>
> MR. MICKENS: Mmm.
>
> DETECTIVE PEREZ: Mmm. Okay.

After that, the detectives told Mr. Mickens about the innocent bystander who was grazed and "caught in the middle," to which Mr. Mickens responded, "Uh-huh. Like me." He then admitted firing a gun and that he regretted doing so:

> DETECTIVE RAGLAND: . . . Did you ever fire that gun that we found when these two guys got shot and killed? . . . This is the moment of truth part.
>
> MR. MICKENS: Uh-huh. Yeah, I know.
>
> DETECTIVE RAGLAND: Okay. This is where you make sure that you don't look like a monster and it's just something that, you know, happened that you regret.
>
> MR. MICKENS: Yeah, I regret it.
>
> DETECTIVE RAGLAND: Okay. What do you regret?
>
> MR. MICKENS: I know y'all want me to say it. I know. I know.
>
> DETECTIVE RAGLAND: Because I need you to say it because if you don't, then I have to paint the story and I don't want to do that.
>
> DETECTIVE PEREZ: This might mend some of your mother's heart, at least the beginning stages because you're

> still a young man. You ain't even 18 yet, man, so you got plenty of time to make this shit right starting now.
>
> DETECTIVE RAGLAND: And the one thing she's going to want you to do is at least be honest to help yourself because there's always light at the end of the tunnel.

Mr. Mickens views these statements as "deeply coercive" by "[u]sing guilt as a tool" on a child who "[saw] his mother repeatedly abused and is in the bottom two percentile for suggestibility."

We view these statements by detectives as appeals to Mr. Mickens's conscience, a permissible tactic. *See Williams v. State*, 219 Md. App. 295, 338 (2014), *aff'd*, 445 Md. 452 (2015) (an "entreaty to . . . sense of conscience" is "plainly permissible"). After reviewing the video, we do not see any "rare and extreme" instance of police conduct that overbore Mr. Mickens's will and induced him to confess. *Lee*, 418 Md. at 159. Consider *Madrid*, where the Court decided whether statements that "Madrid was in the country unlawfully and that he was in danger from gangs . . . render[ed] Madrid's waiver of his rights under *Miranda* involuntary." 474 Md. at 327. Even there, the State met its burden of proving that Mr. Madrid (a juvenile and immigrant) wasn't coerced by the statements. And in *Lee*, an improper promise of confidentiality did not render a confession involuntary even when the "confession followed the detective's comment." 418 Md. at 160.

We cannot view any of the detectives' statements to Mr. Mickens as rising to the level of overbearing Mr. Mickens's will. The videotape shows Mr. Mickens nodding in agreement with detectives and he appears comfortable, and even friendly at times as he spoke with them, asked questions, and even made requests. Before the interrogation started,

Mr. Mickens agreed to tell detectives anything about himself (and only himself) and seemed ready to cooperate after officers found the gun in his home. And Mr. Mickens stated "I regret it" before confirming that he shot Mr. Barrett. Mr. Mickens asserts that "what matters" with respect to the detectives' statements "is how the statement made [*him*] feel." (Emphasis in original.) But because Mr. Mickens didn't testify at the suppression hearing or at trial, the trial court, the jury, and we are left to infer his state of mind and state of voluntariness from what we can observe. Under the totality of the circumstances, the State met its burden of demonstrating by a preponderance of the evidence Mr. Mickens's confession was voluntary.

2. Mr. Mickens's confession was voluntary under the common law of Maryland.

Mr. Mickens argues *next* that his confession was involuntary under Maryland common law. A confession is involuntary under Maryland common law if "it is the product of an improper threat, promise, or inducement by the police." *Hill v. State*, 418 Md. 62, 74 (2011). The trial court found summarily there was no inducement, stating only that the statement wasn't "compelled or obtained as a result of any force, promise, threat or inducement." The State argues there was no improper inducement, and that the confession was not procured by the statements Mr. Mickens finds improper. We agree.

Involuntary confessions are inadmissible under the rule set forth in *Hillard v. State*, 286 Md. 145, 153 (1979), which renders involuntary and inadmissible confessions induced by promises of leniency or offers of help. "'[I]f an accused is told, or it is implied, that making an inculpatory statement will be to his advantage, in that he will be given help or

some special consideration, and he makes remarks in reliance on that inducement, his declaration will be considered to have been involuntarily made and therefore inadmissible.'" *Williams v. State*, 445 Md. at 478 (*quoting Hillard*, 286 Md. at 153). "As with constitutional voluntariness, the State has the burden to prove that [Mr. Mickens's] confession, following [detectives'] improper remark[s], was voluntary under this common law standard." *Lee*, 418 Md. at 161. And again, we, like the circuit court before us, consider the totality of the circumstances. *Hof v. State*, 337 Md. 581, 596 (1995).

Hillard laid out a two-prong inquiry for determining whether a statement has been rendered involuntary by inducement. The *first* prong is objective: "whether a reasonable layperson in the position of [Mr. Mickens] would have inferred from [the detectives'] statement[s] that he could gain the advantage of non-prosecution or some other form of assistance" by making an inculpatory statement. *Hill*, 418 Md. at 78. The *second* prong is subjective: "whether there was a nexus between the promise or inducement and the accused's confession." *Madrid*, 474 Md. at 318 (cleaned up).

a. A reasonable child in the position of Mr. Mickens would not have inferred from the detectives' statements that confessing would garner some form of assistance.

Mr. Mickens argues that, because he was a child, the detectives' statements implied that he would be given special consideration for confessing. He points to three statements:

1. Detective Ragland's statement that by telling detectives "[w]hat was going on that day," Mr. Mickens could "make it good"

2. Detective Ragland's statement that by not telling his side of the story, it "it's

probably going to look worse"

3. Detective Ragland's statement that if Mr. Mickens didn't confess, "I have to paint the story and I don't want to do that."

He argues that "[a]n inexperienced, suggestible juvenile like [Mr. Mickens] must hear those words and believe that confessing is helpful."

Mr. Mickens doesn't cite any cases where such vague statements were held to be improper, and we think it's a stretch to say that even a reasonable child would consider them promises of assistance. *In re Joshua David C.*, 116 Md. App. 580, 603 (1997), cited by Mr. Mickens, involved a ten-year-old boy who was told "that he could have a shirt if he told the truth" where such "an item . . . may be perceived by a ten-year-old boy as giving him great 'worldly advantage.'" In *Brown v. State*, 252 Md. App. 197, 238 (2021), however, we held that the statements "Tell us the truth. That will help you." and "[w]e're trying to help you out here" were not improper inducements because "a reasonable person in the position of the appellant would not have believed that, if he admitted" to the crime, "he would not be prosecuted." *Id.* at 240. "It is well established that mere exhortations by the police for the accused to tell the truth do not render any subsequent incriminating statements involuntary under Maryland common law." *Id.* at 239–40; *see also Reynolds v. State*, 327 Md. 494, 509 (1992); *Ball v. State*, 347 Md. 156, 174 (statement it would be "much better if [suspect] told the story" was not sufficient to render inculpatory statement involuntary); *Fuget v. State*, 70 Md. App. 643, 652 (1987). We discern no improper inducement here and no basis to find the circuit court's finding erroneous.

b. The State met its burden of showing that other factors adduced Mr. Mickens's confession.

Nevertheless, even if the detectives' statements were improper, the State met its burden of proving that Mr. Mickens's confession was not induced by them. The second prong of the *Hillard* test required the court "to determine whether there was a nexus between the promise or inducement and the accused's confession." *Winder v. State*, 362 Md. 275, 311 (2001). In assessing whether there is a nexus between the inducement and the admission, "we examine the particular facts and circumstances surrounding the confession." *Id.* at 312. And "[i]f a suspect did not rely on an interrogator's comments, . . . the statement is admissible regardless of whether the interrogator had articulated an improper inducement." *Reynolds*, 327 Md. at 509.

We pay particular attention to the temporal proximity between the inducement and the inculpatory statement, whether there are any "intervening factors" that could have caused the accused to confess, and the accused's testimony at the suppression hearing. *Hill*, 418 Md. at 77. And for that reason, the way the confession unfolded is especially important here. The gun already had been found at Mr. Mickens's house and the record reveals that before the interview started, Mr. Mickens told police that he wanted to "cooperate" and tell them "anything" about his own involvement. Very early on in the questioning, Mr. Mickens had been presented with still photographs of himself from the video of the shooting, and he admitted that he appeared in them. He never really denied his involvement in the shooting at all—it was only after he had confessed to the crime that the detectives

implore him to provide an explanation, to "make it good" because "[i]f you leave it up to me to write the story . . . it's probably going to look worse . . . ."

Mr. Mickens cites to two cases in his common law voluntariness analysis, *Martin v. State*, 113 Md. App. 190 (1996), and *Hill v. State*, 418 Md. at 62, but these serve only to highlight the absence of a nexus here. In both of those cases, the defendants testified at the suppression hearings that they relied on improper statements made by police. *See Martin*, 113 Md. App. at 211 (suspect was police officer who testified he feared he would be dismissed from his employment if he refused to talk); *Hill*, 418 Md. at 72 (suspect testified that he gave a confession because he thought the victim's family wouldn't prosecute if he apologized); *see also Madrid*, 474 Md. at 329 n.11 (the absence of testimony that detectives' statements induced a confession "support[s] the conclusion that [a suspect] did not confess in reliance on the alleged implicit inducement"). We agree with the State that in this case, it was only after being confronted with all the evidence against him (evidence that wasn't fabricated) that Mr. Mickens acknowledged his culpability, and we hold that the State met its burden of proving by a preponderance of the evidence that Mr. Mickens didn't rely on any improper inducements when he confessed.

B. The Circuit Court Erred In Permitting A Firearms Expert's Testimony Opining That Cartridge Casings Were Fired By A Specific Gun And The Error Was Not Harmless.

To its credit, the State concedes that Ms. Kennedy's testimony should not have been admitted under the Supreme Court's (post-trial) analysis in *Abruquah v. State*, 483 Md. at 637. Ms. Kennedy was permitted to testify that casings from the crime scene came from

Mr. Mickens's gun, testimony that *Abruquah* forbids, and the State pointed to that evidence in its closing argument. The State argues, however, that the error was harmless. Mr. Mickens responds that the "error is not harmless because jurors were surely impacted to some degree by opinion testimony that the gun found in [Mr. Mickens's] home fired shots at the scene." We agree with Mr. Mickens that the opinion testimony cannot be viewed as harmless under the circumstances of this case.

In *Abruquah*, the Maryland Supreme Court held that evidence derived from AFTE methodology could not "reliably support an unqualified conclusion that [particular] bullets were fired from a particular firearm," and that the admission of an unqualified conclusion wasn't harmless beyond a reasonable doubt:

> The firearm and toolmark identification evidence was the only direct evidence before the jury linking Mr. Abruquah's gun to the crime. Absent that evidence, the guilty verdict rested upon circumstantial evidence of a dispute between the men, a witness who heard gunfire around the time of the dispute, a firearm recovered from the residence, and testimony of a jailhouse informant. To be sure, that evidence is strong. But the burden of showing that an error was harmless is high and we cannot say, beyond a reasonable doubt, that the admission of the particular expert testimony at issue did not influence or contribute to the jury's decision to convict Mr. Abruquah.

Id. at 697–98.

In this case, the State's ballistics expert gave the identical form of testimony, and the standard for harmless error is very high. Unless we—on our own review of the record—can "declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed 'harmless' and a reversal is mandated." *Dorsey v.*

State, 276 Md. 638, 659 (1976). "Harmless" means "there is no reasonable possibility that the evidence complained of . . . may have contributed to the rendition of the guilty verdict." *Id.* "The State bears the burden to exclude beyond a reasonable doubt the possibility that the error affected the jury's decisional process." *Belton v. State*, 483 Md. 523, 543 (2023) (*citing Dionas v. State*, 436 Md. 97, 108 (2013)); *see also Abruquah*, 483 Md. at 697–98 ("the burden of showing that an error was harmless is high" and the improper ballistics testimony may not "influence or contribute to the jury's decision to convict").

The State seeks to distinguish *Abruquah* on the basis of direct evidence incriminating Mr. Mickens—his confession that the gun seized was the gun used in the crime and the surveillance footage of the shootings. In other words, the State doesn't distinguish the nature of the error, but rather that the evidence aside from the ballistics testimony proved Mr. Mickens is guilty: the State says that "[t]he jury could watch the videos and assess for itself whether [Mr.] Mickens was the person depicted in them firing a gun by comparing images of [Mr.] Mickens's bandaged pinky to the bandage on the shooter's pinky and the jacket found in [Mr.] Mickens's home to the one worn by the shooter." The State insists that the jury wouldn't have reached a different conclusion had it heard that the markings on some cartridge casings were *consistent* with the firearm recovered in Mr. Mickens's home rather than the unqualified opinion that the cartridge casings *in fact* came from Mr. Mickens's specific gun.

But the gun casings were an essential physical link in a case with a contested confession and no other physical or testimonial evidence linking Mr. Mickens to the crime.

(Remember: Mr. Clark never identified Mr. Mickens, unlike his co-defendants.) Although we held Mr. Mickens's confession admissible, the State's burden on this issue before the jury was higher at trial.[5] Because the voluntariness of the confession was a contested issue for the jury, the jury could have chosen to disregard the confession and rely instead on the scientific opinion evidence that a specific weapon has been identified as used in a crime to the exclusion of the other evidence.

In any event, the State's harmless error argument is not a question of the sufficiency of the remaining evidence, *i.e.*, whether the jury "*could*" have found—absent the ballistics evidence—that Mr. Mickens was the shooter depicted in the surveillance videos. The question is whether the ballistics evidence "influence[d] or contribute[d] to the jury's decision to convict." *Id.* at 698. This is a harder question and one that, in our view, this record cannot resolve beyond a reasonable doubt. We can't exclude the possibility that the evidence pushed this jury toward conviction because we can't say that the error "'in no way influenced the verdict,'" *Belton*, 483 Md. at 542 (*quoting Dorsey*, 276 Md. at 659).

[5] The jury was instructed to disregard Mr. Mickens's statement "unless the State has proven beyond a reasonable doubt that the force, threat, promise or inducement or offer of reward did not in any way cause the defendant to make the statement." And the jury was instructed otherwise to "decide whether it was voluntary under all the circumstances" and that if the jury finds "beyond a reasonable doubt that the statement was voluntary," they were to "give it such weight as [they] believe it deserves."

We reverse Mr. Mickens's convictions and remand the case to the trial court for further proceedings consistent with this opinion.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED AND CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLEE TO PAY COSTS.